IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7489 of 2003
to
SPECIAL CIVIL APPLICATION No 7575 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

COMMISSIONER OF INCOME TAX

Versus

KANJIBHAI VANDAS PATEL (HUF)

Appearance:

1. Special Civil Application No. 7489 to 7575 of 2003

MR MANISH R BHATT for Petitioner No. 1

MR TUSHAR HEMANI with MR SN SOPARKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 15/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. Mr.Tushar Hemani, the learned advocate appearing for the respondent, submitted that the issue involved in this group of petitions is identical with that raised in Special Civil Application No.7110 of 2002 and allied matters which have been disposed of by the Full Bench of this Court under oral judgment dated 17.9.2003. He submitted that similar orders may be passed in this group of petitions. Mr.M.R.Bhatt, the learned senior standing counsel appearing for the petitioner, is not in a position to controvert this submission. In light of the oral judgment dated 17.9.2003 rendered by the Full Bench of this Court in Special Civil Application No.7110 of 2002 and allied matters, similar permission is accorded to the petitioner-revenue as contained in paragraphs 5, 6 and 7 of the judgment, which are reproduced hereinbelow:-

"5. During the course of the arguments, the learned senior advocate appearing for the petitioner in all these petitions tried to raise a contention that the interest income paid by the main trust to the assessee beneficiary trusts was an interest income in their hands, and irrespective of the fact whether such amount was allowed as a deductible expenditure in the assessment of the main trust it was liable to be taxed in the hands of the assessee beneficiaries. In support of this contention, the learned counsel wanted to rely upon material which was admittedly not placed before the Tribunal, including the assessment order of 1988-89, the appellate order of 1988-89 and the order of the Tribunal of 1988-89 as stated by him. It would be trite thing to say that the material which was not placed before the Tribunal and which may have a bearing on the contention now sought to be raised cannot be looked into for the first time by this Court at this stage. In this view of the matter, the appropriate course appeared to be that the petitioner may approach the Tribunal by way of an application for revising and/or modifying the orders of the Tribunal raising the new contentions on the basis of the material which they could not earlier bring on the record of the Tribunal in all these matters.

"6. The learned senior counsel for the

petitioners submitted that the petitioners would submit a paper book bringing to the notice of the Tribunal the additional material which was relevant, but which could not be brought to its notice during the proceedings before it along with the application for revising or modifying the impugned orders that will be filed by the petitioner. He also submitted that the petitioners would draw the attention of the Tribunal to its judgment rendered on 28th December, 2001 taking a different view on the same subject. It will be open for the petitioner to make such a move before the Tribunal.

"7. Having regard to the fact that the learned senior counsel for the petitioner wants to rely on the material not earlier produced before the Tribunal in support of the contention which does not appear to have been specifically raised on the basis of the fresh material which was not produced, it appears to us that it would be appropriate for the petitioner to raise the contentions which are sought to be raised before this Court but were not raised before the Tribunal, in their application for revising and/or modifying the order of the Tribunal along with the fresh material on which the petitioner seeks to rely in support thereof. On such application being made by the petitioner, the Tribunal shall consider the same and after hearing the concerned parties, take a decision thereon in accordance with law."

2. All these petitions stand disposed in terms of the above directions. Rule is discharged in each of them with no order as to costs.

3. The Registry is directed to maintain a copy of this judgment in each of the petitions.

Sd/-

(D.H.Waghela,J.)

Sd/-

(D.A. Mehta, J.)

(KMG Thilake)